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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BRIAN SWEENEY et al.,

Plaintiffs and Appellants,

v.

JULIE SCULLY et al.,

Defendants and Respondents.

B284915

(Los Angeles County  
Super. Ct. No. SC124161)

APPEAL from an order of the Superior Court of Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

Law Offices of Don Merkin and Don Merkin for Plaintiffs, Appellants, and Cross-Respondents.

Miller Law Associates, Randall A. Miller and Zachary Mayer for Defendants, Respondents, and Cross-Appellants.

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## INTRODUCTION

A dispute over the amount of damage caused by tenants renting a luxury oceanfront condominium led those tenants to file suit for return of their security deposit. The landlord filed contract and tort counterclaims, alleging the tenants made misrepresentations to induce the rental, and breached the lease agreement by wreaking significant damage to the condominium. A jury agreed with the landlord and awarded \$287,581.75 in compensatory damages.

Following trial, the landlord sought \$659,367.56 in attorneys' fees based on a provision in the lease agreement entitling the prevailing party in any legal proceeding arising out of the lease to reasonable attorneys' fees. The tenants opposed the motion, arguing that Civil Code section 1950.5,<sup>1</sup> which governs residential property rental security deposits, preempted the landlord's tort claims along with any ability to award fees on those claims. The tenants also argued the fee request was otherwise excessive.

The trial court rejected the argument that fees were not recoverable on the tort claims, but agreed the fee request was excessive. After making detailed findings and explaining its reasoning in a 17-page order, the court awarded the landlord \$428,175 in attorneys' fees. Both sides now appeal that fee award order. We reject their challenges and affirm.

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<sup>1</sup> All statutory references are to the Civil Code.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Rental Application and Lease Agreement**

In July 2012, Brian and Vera Sweeney (Tenants) leased a furnished condominium unit in an oceanfront luxury high-rise building in Santa Monica. The unit was owned by a trust controlled by Julie and Michael Scully (collectively, Landlord). In their rental application, Tenants were asked to list their residence history. Tenants mentioned two homes in La Jolla—one in which they lived from 2001–2011, and another they used as a weekend home from 2011 to the present day. According to information later discovered by Landlord, Tenants omitted any mention of a unit they were currently renting in Santa Monica (as to which they intended to breach their lease to move into Landlord’s rental unit), as well as their lease of a single family home in Pacific Palisades which resulted in a lawsuit between Tenants and the owner of that property.

The lease agreement was documented using the California Association of Realtors’ standard form lease agreement. The lease term ran from August 31, 2012 through February 28, 2015 at a rate of \$23,500 a month. Tenants paid a \$60,000 security deposit at the commencement of the lease. The lease did not permit pets without the Landlord’s consent except for “one Maltlese [sic] service dog.” The lease provided that “[i]n any action or proceeding arising out of this Agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs” unless the party failed first to mediate.

## **B. The Litigation**

By the conclusion of the lease, the unit had suffered damage beyond ordinary wear and tear. Tenants alleged they employed cleaners and contractors to remedy that damage and requested the return of their security deposit. Landlord asserted the unit remained damaged in excess of the \$60,000 security deposit, refused to return that deposit, and demanded additional payment from Tenants.

After an unsuccessful mediation, Tenants sued for the return of the security deposit. Tenants also sought statutory damages pursuant to section 1950.5 as well as attorneys' fees and costs. Landlord cross-complained, asserting breach of contract and tort claims for negligent and intentional waste based on alleged damage to the unit. Landlord sought damages in excess of \$200,000, punitive damages, and attorneys' fees and costs.

After Tenants sought and obtained judgment on the pleadings on the waste claims, Landlord filed an amended cross complaint adding claims for intentional and negligent misrepresentation. Landlord alleged Tenants misrepresented their Maltese was a service animal, and omitted their prior rental history, to induce Landlord to agree to the lease and that Landlord would not have leased the unit had it known the true facts.

After an eight-day trial, the jury unanimously found in Landlord's favor. Landlord was awarded \$287,581.75 in compensatory damages on its three causes of action: \$161,380 in construction damages, \$120,000 for loss of use, \$5,907.75 for moving and storage expenses, and \$294 for damaged furnishings. The jury declined to award any punitive damages.

### **C. The Fee Request and Award**

Following trial, Landlord sought \$659,367.56 in attorneys' fees. Tenants opposed the request, arguing section 1950.5 precluded Landlord's tort claims (making a fee award on those claims inappropriate), and that the request was otherwise excessive. After briefing and oral argument, the court took the matter under submission. Landlord requested the opportunity to file additional briefing, and for the court to hold a further hearing, so Landlord could address the court's statements during the hearing that the fee request appeared excessive. The court denied the request for further briefing and argument.

In making its fee award, the court issued a lengthy written opinion setting forth its reasoning for awarding less than the amount Landlord requested. The court rejected Tenants' argument that Landlord should not receive a fee award for hours expended on the tort claims, noting the jury found in Landlord's favor on those claims and awarded damages on those claims co-extensive with those awarded on the contract claim. The court agreed with Tenants, however, that the fee request was excessive. Among other things, the trial court found (1) given the straightforward nature of the matter, it was unreasonable for Landlord to have two partner level attorneys present for four of the eight trial days, (2) the amount of trial time expended by Landlord was unreasonable, (3) billing entries indicated duplicative efforts as well as unreasonable amounts of time for certain tasks, and (4) counsel submitted block billing entries in which multiple services were set forth without any individual breakdown which hindered the court's ability to find the time

spent was in fact reasonable.<sup>2</sup> Using a lodestar methodology, the court found a reasonable hourly rate to be \$495 an hour (the rate in fact charged by trial counsel) and 865 hours to be a reasonable number of hours, resulting in a fee award of \$428,175.

This appeal followed. Neither side challenges the underlying trial or verdict. Tenants filed a timely notice of appeal and claim the court erred in rejecting their argument that no attorney fees should be awarded on Landlord's tort claims. Landlord filed a timely cross-appeal, and claims the court erred in reducing the fees it awarded.

## DISCUSSION

### A. Standard of Review

“The ‘experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong’—meaning that it abused its discretion.” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM Group*)). “An attorney fee dispute is not exempt from generally applicable appellate principles: ‘The judgment of the trial court is presumed correct; all intendments and presumptions are indulged to support the judgment; conflicts in the declarations must be resolved in favor of the prevailing party, and the trial court’s resolution of any factual disputes arising from the evidence is

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<sup>2</sup> We note that Landlord was represented by different law firms in the trial court, and therefore these criticisms do not pertain to Landlord’s appellate counsel.

conclusive.’ ” (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322 (*Christian Research Institute*).)

With regard to the scope of section 1950.5, “[w]e review questions of statutory construction de novo.” (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1041 (*California Building*).)

## **B. The Trial Court Did Not Abuse its Discretion in Awarding Fees**

### **1. Tenants’ Claims of Error**

The parties agree, and we concur, that the prevailing party attorneys’ fees provision at issue encompasses tort as well as contract claims “arising out of” the lease agreement. (E.g., *Johnson v. Siegel* (2000) 84 Cal.App.4th 1087, 1101 [attorneys’ fees provision applying to any proceeding “*arising out of this Agreement*” applies to both tort and contract causes of action].) They disagree, however, over whether Landlord’s tort claims were preempted by section 1950.5. In Tenants’ view, because the tort claims were preempted, Tenants prevailed on those claims and it is Tenants who are entitled to their fees as a prevailing party. We are not persuaded.

(a) *Section 1950.5 does not preempt claims for amounts other than the security deposit*

Tenants’ argument is built on the premise that section 1950.5 provides the sole and exclusive remedy for any disputes regarding their tenancy once the lease term ended. In Tenants’ view, no matter how much damage (intentional or otherwise) a tenant causes to a rental unit, section 1950.5 limits the Landlord to contract claims based on the lease and damages measures

corresponding to those set forth in section 1950.5 regarding offsets to a security deposit. Tenants cite no specific statutory language or legislative intent, and no precedent, supporting this interpretation of section 1950.5.

In considering whether section 1950.5 precluded Landlord's tort claims, we look first at the words of the statute. (*Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 744 (*Granberry*); see also *California Building, supra*, 4 Cal.5th at p. 1041 ["the words of a statute [are] the most reliable indicator of legislative intent"].) Section 1950.5 "applies to security for a rental agreement for residential property that is used as the dwelling of the tenant." (§ 1950.5, subd. (a).) It places limitations on the amount a landlord can demand as a security deposit and prohibits nonrefundable security deposits. (§ 1950.5, subds. (c), (m).) It limits the types of claims a landlord may assert when seeking to levy on the security deposit and sets forth inspection and other procedures governing entitlement to the security deposit when the tenancy terminates. (§ 1950.5, subds. (e)-(i).) Landlords who retain or make a claim on a security deposit in bad faith may be subject to statutory damages of up to twice the amount of the security deposit. (§ 1950.5, subd. (l).)

As is apparent from its language, section 1950.5 "was enacted to ensure the speedy return of security deposits on the termination of tenancy and to prevent the improper retention of such deposits." (*Granberry, supra*, 9 Cal.4th at p. 746.) Section 1950.5 by its own terms is limited to the disposition of security deposits. Nothing in its language suggests it is intended to be the sole and exclusive remedy for any dispute regarding the landlord-tenant relationship, or to preclude landlords or tenants from bringing claims unrelated to the security deposit, once a lease

concludes. Nowhere does the statute state that it bars tort claims or provides an exclusive measure of damages for any dispute after a lease terminates. Nor does it explain what is to occur if a landlord's damages exceed the amount of the security deposit, or how a tenant is to recover if the landlord damaged the tenant—puzzling omissions if the statute provided the sole and exclusive remedy for tenancy issues as Tenants claim. “[I]t seems unlikely the Legislature intended, without saying so, to modify” common law tort jurisprudence or damage rules “when it could achieve that result more directly by a simple statutory mandate . . . .” (*Korens v. R.W. Zukin Corp.* (1989) 212 Cal.App.3d 1054, 1059.) Moreover, reading section 1950.5 to preempt tort claims related to a residential rental would presumably prevent not only a landlord but also a tenant from bringing valid tort claims related to a property lease—an illogical result inconsistent with case law. (E.g., *Hjelm v. Prometheus Real Estate Group, Inc.* (2016) 3 Cal.App.5th 1155 [affirming jury verdict on tort and other claims against landlord when apartment inundated with bedbugs and raw sewage]; *Cruz v. Ayromloo* (2007) 155 Cal.App.4th 1270 [affirming attorney fees award to tenants awarded tort damages].)

In *Granberry*, the landlord failed to comply with the procedures in section 1950.5 governing the disposition of security deposits. (9 Cal.4th at pp. 742–743.) Despite this failure, our Supreme Court held the mere fact that the landlord had lost the right to take advantage of the “summary deduct-and-retain procedure” provided by section 1950.5 “does not lead to the conclusion that he has lost *all* right to claim damages for unpaid rent, repair, and cleaning, whether through setoff *or otherwise*.” (9 Cal.4th at p. 745, second italics added.) Similarly, here the

existence of section 1950.5 does not lead to the conclusion that Landlord lost all right to claim damages through means other than section 1950.5. In short, section 1950.5 did not eliminate Landlord's ability to pursue its tort claims against Tenants.<sup>3</sup>

(b) *The Trial Court Did Not Abuse its Discretion in Finding the Landlord Prevailed on the Tort Claims*

Because Landlord was entitled to pursue its tort claims, the trial court did not abuse its discretion in awarding fees on those misrepresentation claims. “ ‘Generally, the trial court’s determination of the prevailing party for purposes of awarding attorney fees is an exercise of discretion, which should not be disturbed on appeal absent a clear showing of abuse of discretion.’ ” (*Wohlgemuth v. Caterpillar, Inc.* (2012) 207 Cal.App.4th 1252, 1258.) Here, the jury found in Landlord’s favor on the tort claims and awarded damages on those claims co-extensive with contractual damages. The court’s determination that Landlord prevailed on the tort claims was well within its discretion.

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<sup>3</sup> While we hold section 1950.5 did not preempt the Landlord from bringing tort claims, we are not called upon to opine whether Landlord’s misrepresentation causes of action asserted viable claims on which damages could be awarded, and accordingly express no opinion on that question. As noted above, Tenants do not challenge the sufficiency of the evidence on either the jury’s finding of liability on the tort claims, or the damages award on those claims.

## 2. *Landlord's Claims of Error*

Landlord claims the trial court abused its discretion by arbitrarily reducing the amount of fees awarded, and by denying Landlord the opportunity to make further arguments after the court took the matter under submission. We disagree.

### (a) *The Trial Court Did Not Abuse its Discretion in Reducing the Fees Awarded to Landlord*

In making its fee award, the trial court used a lodestar method—that is, the number of hours reasonably expended multiplied by a reasonable hourly rate. Our Supreme Court long ago indicated the wisdom of this approach, which “ ‘has the virtue of being relatively easy to administer. We do not want “a [trial] court, in setting an attorney’s fee, [to] become enmeshed in a meticulous analysis of every detailed facet of the professional representation. It . . . is not our intention that the inquiry into the inadequacy of the fee assume massive proportions, perhaps dwarfing the case in chief.” ’ ” (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 642.)

The parties raise no objection to the hourly rate used by the court, and instead focus on its computation of the number of hours reasonably expended. The “ ‘computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys’ fee award.’ ” (*PLCM Group, supra*, 22 Cal.4th at p. 1095.) “A trial court may not rubberstamp a request for attorney fees, but must determine the number of hours *reasonably* expended.” (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271 (*Donahue*)). “To the extent a trial court is concerned that a particular award is excessive, it has broad discretion to adjust the fee downward or deny an

unreasonable fee altogether.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.)

Landlord’s arguments regarding the propriety of the reduced award made by the trial court are little more than a rehash of claims advanced and rejected below. “We may not reweigh on appeal a trial court’s assessment of an attorney’s declaration. [Citation.] ‘The trial court, with declarations and supporting affidavits, [is] able to assess credibility and resolve any conflicts in the evidence. Its findings . . . are entitled to great weight. Even though contrary findings *could* have been made, an appellate court should defer to the factual determinations made by the trial court when the evidence is in conflict.’” (*Christian Research Institute, supra*, 165 Cal.App.4th at p. 1323.)

The court identified specific reasons for its reduction in the number of allowable hours. The case “was not complex,” and involved only seven trial witnesses (as well as the introduction of some deposition testimony from an eighth witness). It was unreasonable to incur the expense of two partner level attorneys for four of the eight trial days given the simplicity of the case and the limited number of witnesses and documents. The time Landlord’s counsel expended during trial was unreasonable—witnesses examinations were “extraordinarily slow,” which resulted in judicial admonitions about the amount of time being taken and multiple jury notes such as “‘Why are the attorneys allowed to waste some much time . . . ?’”; “‘Why do you allow the attorneys to ask cumulative questions . . . ?’”; and “‘Why are the questions repeated ten times?’” Landlord overlitigated and overcomplicated aspects of the case. Landlord’s counsel submitted problematic billing entries that interfered with determining whether reasonable time was expended on tasks.

Finally, as a point of comparison, Landlord's counsel expended approximately 1,300 billable hours in contrast to approximately 890 hours by Tenants' counsel.

Substantial evidence supported these findings, and Landlord's complaints that the court's conclusions were an abuse of discretion are refuted by applicable case law. Landlord complains the court did not quantify the amount of time unnecessarily expended by counsel, when no such granular quantification is required. (*Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1349 ["The court was not required to explain which of counsel's hours were disallowed"].) Landlord claims the trial court erred in not crediting its explanations for hours the court found unreasonable, when a reduced fee award can be "fully justified by a general observation that an attorney overlitigated a case" (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101), and the trial court here did more than make a general observation and specifically identified examples of unreasonable time expenditure. Landlord claims the trial court erred in finding it unreasonable to have two partners appear at trial, when fee awards are routinely reduced for similar overstaffing. (E.g., *Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1244 [upholding fee reduction when staffing by multiple attorneys suggested duplication and inefficiency].) Landlord claims it should not be penalized when Tenants' litigation approach increased the number of hours expended, yet Tenants spent far fewer hours litigating the case and such a "comparative analysis of each side's respective litigation costs may be a useful check on the reasonableness of any fee request." (*Donahue, supra*, 182 Cal.App.4th at p. 272.)

Last, but not least, Landlord relies on aged California authority from more than thirty years ago, and nonbinding federal cases, to argue the trial court improperly criticized its counsel's block billing. None of Landlord's authorities in fact endorse block billing, and many caution against the practice. (E.g., *Hensley v. Eckerhart* (1983) 461 U.S. 424, 437, fn. 12 [“ ‘As for the future, we would not view with sympathy any claim that a district court abused its discretion in awarding unreasonably low attorney's fees . . . if counsel's records do not provide a proper basis for determining how much time was spent on particular claims.’ ”]; *League of United Latin Am. Citizens v. Roscoe ISD* (5th Cir. 1997) 119 F.3d 1228, 1233 [“ ‘[l]itigants take their chances’ by submitting fee applications that are too vague to permit the district court to determine whether the hours claimed were reasonably spent”].)

In any event, attorney billing practices have evolved and more recent California authority is to the contrary. “Block billing presents a particular problem for a court seeking to allocate between reimbursable and unreimbursable fees, and trial courts are granted discretion ‘to penalize block billing when the practice prevents them from discerning which tasks are compensable and which are not.’ ” (*In Re Marriage of Nassimi* (2016) 3 Cal.App.5th 667, 695.) Billing submitted to a court in connection with a fee request “should allow the court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended.” (*Christian Research Institute, supra*, 165 Cal.App.4th at p. 1320.) “Blockbilling, while not objectionable per se in our view, exacerbate[s] the vagueness of counsel's fee request, a risky choice since the burden of proving entitlement to fees rests on the

moving party.” (*Id.* at p. 1325.) The trial court’s criticism of the block billing entries, and its related reduction in hours based on that criticism, was well within its discretion.

(b) *The Trial Court Did Not Abuse its Discretion in Denying Supplemental Briefing and a Further Hearing*

Landlord asserts due process required it be given an opportunity to respond to the court’s determination of the reasonable time expended before that decision became final—in other words, that after taking the matter under submission, the court was required to issue a tentative opinion and then permit additional briefing and a further hearing before finalizing its ruling. Landlord’s sole legal authority for requiring this cumbersome procedure is *Moore v. California Minerals etc. Corp.* (1953) 115 Cal.App.2d 834, 837, which is inapposite. *Moore* holds a trial court must give notice and an opportunity to be heard when it sua sponte unearths a dispositive *point of law*. Here, in contrast, the law governing the award of attorneys’ fees is well-established, and the issues the court took under submission were factual and not legal.

“ ‘Due process requires notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” ’ ” (*Flores v. Kmart Corp.* (2012) 202 Cal.App.4th 1316, 1329.) A trial court has no sua sponte duty to explain the specifics of an attorney fees award issued after a hearing on a fee motion. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1250.) It therefore follows a court has no duty to give prior notice of the specifics of an award before

issuing it, much less provide a tentative opinion after briefing followed by an opportunity for still more briefing and argument following that tentative. Landlord had the opportunity to brief the issue of attorneys' fees, and to respond orally to questions and comments by the court at a hearing on that motion, before the court issued a final order. That procedure provided due process to Landlord and its argument to the contrary is without merit.

### **DISPOSITION**

The order is affirmed. The parties are to bear their own costs on appeal.

WEINGART, J.\*

We concur:

ROTHSCHILD, P. J.

CHANEY, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.